

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Joan B. Gottschall	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 3770	DATE	7/6/2004
CASE TITLE	Muhammad vs. Village of Bolingbrook, et al.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

Defendants' Motion to Dismiss

## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☒ Status hearing set for 7/28/04 at 9:30 a.m.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Defendants' motion to strike and dismiss [28-1 and 28-2] is granted in part and denied in part. Plaintiff's ADEA claim against defendant Bolingbrook Police department is dismissed. Defendants' motion to dismiss plaintiff's Section 1983 claims against defendants Each, George and Johnstone is denied. Status set for July 28, 2004 at 9:30 a.m.
- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials RJ	U.S. DISTRICT COURT CLERK 2004 JUL -6 PM 1:46 FILED-101	number of notices	Document Number 41
			JUL 08 2004 date docketed	
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**DOCKETED**

**JUL 08 2004**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MARIA A. MUHAMMAD,

Plaintiff,

v.

VILLAGE OF BOLINGBROOK,  
BOLINGBROOK POLICE DEPARTMENT,  
CHIEF KENNETH EACH, COMMANDER  
KEITH GEORGE, SERGEANT MICHAEL  
JOHNSTONE,

Defendants

No. 02 C 3770

Judge Joan B. Gottschall

**ORDER AND MEMORANDUM OPINION**

Maria A. Muhammad ("Muhammad"), a police officer with the Bolingbrook Police Department ("Bolingbrook PD"), has sued Bolingbrook PD, the Village of Bolingbrook (the "Village"), and several of her superior officers alleging that she was discriminated against on the basis of age, race, national origin, religion and gender in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e, *et seq.*, the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, and 42 U.S.C. § 1983. On November 4, 2002, defendants moved to dismiss some of Muhammad's claims. This court granted defendants' motion in part and denied it in part, dismissing (a) Muhammad's Title VII claim against Bolingbrook PD because Bolingbrook PD is not an "employer" within the meaning of that act, (b) her Section 1983 claim against Bolingbrook PD because the department has no legal existence separate from the Village and, therefore, is not a "person" against whom a suit can be brought under that section, and (c) her Title VII and ADEA claims against her superior officers because there is no

individual liability under those statutes.

In their initial motion, defendants did not move to dismiss Muhammad's ADEA claim against Bolingbrook PD or her Section 1983 claim against her superior officers. In the "renewed motion" before the court, defendants now seek dismissal of those claims pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons stated below, defendants' renewed motion to dismiss is granted in part and denied in part. Muhammad's ADEA claim against defendant Bolingbrook PD is dismissed. Defendants' motion to dismiss Muhammad's Section 1983 claim against her superior officers is denied.

### ANALYSIS

When ruling on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the court accepts the factual allegations made in the plaintiff's complaint as true. *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 164 (1993). The court will then consider whether any set of facts, consistent with the allegations could support plaintiff's claim for relief. *Bartholet v. Reishauer A.G.*, 953 F.2d 1073, 1078 (7<sup>th</sup> Cir. 1992). A complaint need only contain enough facts to put the defendant on notice of the claim so that an answer can be filed. *Flannery v. Recording Indus. Assoc. of America*, 354 F.3d 632, 639 (7<sup>th</sup> Cir. 2004). Dismissal should be granted only if it is "beyond doubt" that the plaintiff cannot prove any facts to support a claim entitling plaintiff to relief. *Haines v. Kerner*, 404 U.S. 519, 520-521 (1972). In that inquiry, complaints prepared *pro se*, such as Muhammad's, are given greater latitude. *Id.*

Ordinarily, defendants' renewed motion to dismiss would be barred by Fed. R. Civ. P. 12(g), which provides that any issues or objections that the defendant fails to raise in the initial motion to dismiss are waived. Fed. R. Civ. P. 12(b)(6). The purpose of Rule 12(g) is to prevent litigants from unnecessarily delaying proceedings at the pleading stage by interposing their defenses piecemeal. *Donnelli v. Peters Sec. Co.*, No. 02-C-0691, 2002 WL 2003217, \*3 (N.D.

Ill. Aug. 29, 2002). However, “a court might properly entertain [a] second motion to dismiss if convinced that it is not interposed for delay and that the disposition of the case on the merits can be expedited by doing so.” *Id.* The court finds that defendants’ renewed motion meets that standard: the motion does not appear to have been filed to delay proceedings and adjudication of this motion will narrow the issues before the court, allowing it to resolve this matter more quickly. Failure to rule would result only in unnecessary delay, expense and inconvenience for all parties. Therefore, the court will address the merits of defendants’ motion.

#### **I. Muhammad’s ADEA Claim Against Bolingbrook PD**

Bolingbrook PD argues that Muhammad’s ADEA claim must be dismissed because it is not a proper defendant for such a claim. Although caselaw on ADEA claims against law enforcement agencies is sparse, defendants analogize to Title VII, pointing out that, under that statute, police departments are neither an employer, nor a proper defendant. *E.g., McCraven v. City of Chicago*, 18 F.Supp. 2d 877, 881 (N.D. Ill. 1998). This is so because, as this court held in dismissing Muhammad’s Section 1983 and Title VII claims against Bolingbrook PD, municipal police departments have no legal existence independent from the municipality that they serve. *See Chan v. City of Chicago*, 777 F. Supp. 1437, 1442 (N.D. Ill. 1991); *Collins v. Village of Woodridge*, 1995 WL 632260, \*1 (N.D. Ill. 1995). Rather, the municipality is responsible for the unlawful acts of its police department and, therefore, is the proper defendant to a Title VII claim alleging discrimination by that department. *McCraven* 18 F.Supp.2d at 881. The court finds that the same logic applies to Muhammad’s ADEA claim. *See, e.g., EEOC v. AIC Sec. Investigations, Ltd.*, 55 F.3d 1276, 1280 (7<sup>th</sup> Cir. 1995) (noting that courts often apply arguments of liability to Title VII and the ADEA interchangeably). The court concludes that the Village of Bolingbrook, which is already a party to this action, is the proper defendant for Muhammad’s ADEA claim and that naming Bolingbrook PD as a defendant in that claim adds

nothing to Muhammad's complaint. The court, therefore, dismisses Muhammad's ADEA claim as to Bolingbrook PD.

## **II. Muhammad's Section 1983 Claims Against Her Supervisors**

Defendants also argue that Muhammad's complaint as to the individual officers should be dismissed because it "does not contain allegations against [them] in their individual capacity." However, that is not the case. Although Muhammad has not made specific factual allegations against each defendant by name, the gravamen of her complaint is clear. She claims that defendants denied her several promotions due to her age and gender despite her "excellent qualifications."<sup>1</sup> She describes her claim in great detail, identifying each of the promotions she was denied, naming the officers who received the promotion and describing the age and education of the promoted officers. While she has not specified each individual officer's role in the promotions process, she has provided enough information to place her superior officers on notice of the claims against them. The court finds that Muhammad's Section 1983 claim meets the liberal notice pleading standard of Fed. R. Civ. P. 8 and, therefore, defendants' motion to dismiss that claim is denied.

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<sup>1</sup> Muhammad's Title VII claims that she was discriminated against on the basis of religion, color, national origin and race have been dismissed because those claims were not raised in her complaint before the Equal Employment Opportunity Commission.

## **CONCLUSION**

For the reasons stated above, defendants' motion to dismiss is granted in part and denied in part. Plaintiff's ADEA claim against defendant Bolingbrook Police Department is dismissed. Defendants' motion to dismiss Muhammad's Section 1983 claim against her superior officers is denied.

ENTER:



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JOANE B. GOTTSCHALL  
United States District Judge

DATE: July 6, 2004